IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

MACA.No. 960 OF 2004(G)

OPMV.1093/1999 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
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APPELLANT/CLAIM PETITIONER:

JOMOM @ CHANDY, S/O. MATHEW KULANGARA
HOUSE, THURUTHY, NEAR MISSION CHURCH,
VAZHAPPALY KARA, VAZHAPPALLY EAST VILLAGE,
KOTTAYAM.

BY ADV. SRI.P.RAVINDRA BABU

RESPONDENTS:
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1. SIVAN KUTTY. E.S., S/O. SANKARAN,
ILLIPARAMPIL HOUSE, NEAR RAILWAY CROSS,
MOOLAVATTOM KARA, NATTAKOM VILLAGE, KOTTAYAM.

2. THANKAMANI PRAKASH, W/O. JAYAPRAKASH,
POKATHIL HOUSE, THURUTHY P.O., CHANGANACHERRY.

3. GIGIMOL, D/O. JAYAPRAKASH,
POKATHIL HOUSE, THURUTHY P.O., CHANGANACHERRY.

4. MONKUTTY, S/O. JAYAPRAKASH,
POKATHIL HOUSE, THRUTHY P.O., CHANGANACHERRY.

5. NATIONAL INSURANCE CO.LTD.,
REPRESENTED BY BRANCH MANAGER, BRANCH OFFICE,
P.B.NO.70, M.C. ROAD, CHANGANACHERRY.

BY ADV. SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

M.A.C.A. NO. 960 OF 2004

DATED THIS, THE 12TH DAY OF MARCH, 2007.

J U D G M E N T

Raman, J.

Appellant is the petitioner in O.P.(MV) 1093/1999 on the file of the Motor Accidents Claims Tribunal, Kottayam. He was a passenger in an autorickshaw of which the first respondent was the driver. It was found that the accident occurred due to the rash and negligent driving of the vehicle by the first respondent. The 5th respondent in the claim petition is the insurer of the vehicle. The main dispute is regarding the quantum of compensation awarded. Though the appellant claimed that his monthly income was Rs. 3,000/- and Ext.A16 salary certificate was produced, it was not proved properly and in that circumstance, the Tribunal took Rs. 1,700/- as his income at the time of the accident. The appellant sustained injury to one of his eyes thereby suffering 30% of visual disability. The doctor was not examined in the case. The Tribunal awarded an amount of Rs. 50,000/- on that count. According to the appellant, the amount awarded is too low and the Tribunal ought to have accepted his income as Rs.3,000/- as evidenced by Ext.A16 certificate. But we find that when there was no proper evidence regarding the percentage of disability suffered and going by the Schedule under the Workmen's Compensation Act, only 10% will be the loss of earning capacity and on a proper calculation applying the multiplier, the compensation will be much less than Rs. 30,000/-. However, since there is no appeal by the Insurance Company, we do not think that the

amount already awarded could be reduced. At the same time, we do not find good reasons to enhance the amount under this head. An amount of Rs. 15,000/- is also granted towards loss of earning power, which is also reasonable. An amount of Rs. 12,000/- is awarded for pain and suffering . Thus, compensation has been awarded under each and every head in a reasonable manner which do not call for any interference.

However, we find that while totaling the amount under each head, the claimant will be entitled to an amount of Rs. 88,300/-. But in the operative portion of the award, it is stated that the appellant will be entitled to Rs. 58,300/-, which is apparently a mistake on the face of the record. We therefore, set aside the operative portion of the award and an amount of Rs. 88,300/- is awarded in the place of Rs. 58,300/-. In all other respects, the award passed by the court below is sustained.

The M.A.C.A. is disposed of as above.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-